RECENT IMPORTANT DECISIONS

ALIENS—RIGHT TO TAKE LAND BY DESCENT—LOSS OF STATE'S RIGHT TO ESCHEAT.—Abrams conveyed land to Lou Graham for a valuable consideration; Graham made valuable improvements, and thirteen years later died intestate. This action was for possession against the administrator. The state and county filed separate answers, claiming that the property upon the death of Graham, by operation of law, escheated to the state. While the alien heirs claim title by descent from the deceased. *Held,* that the deed from Abrams divested him of the title to the property; that prior to the death of Graham the state was entitled to proceedings to have declared an escheat; that the state, having failed to declare such an escheat prior to her death, lost its right so to do; that upon her death, the real estate descended to her alien heirs. *Abrams* v. *State et al* (1907), — Wash. —, 88 Pac. Rep. 327.

Article II, § 33, of the Constitution provides that "The ownership of land by aliens other than those who in good faith have declared their intentions to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage, or in good faith in the ordinary course of justice in the collection of debts, and all conveyances of land hereafter made to any alien directly, or in trust for such alien, shall be void," with certain exceptions made in regard to mineral lands, etc. In view of former decisions of this court it was decided that Abrams by his deed divested himself of all right, title or interest in such property, and that the word "void" as used in the Constitution only meant "voidable" at the instance of the state. Five of the seven judges were of the opinion that the Constitution conferred upon aliens a complete right of inheritance, which would imply, not only the right in themselves to receive by such inheritance from a citizen, but also to receive by inheritance from an alien. The two dissenting judges were of the opinion that an heir could not take a greater estate than the ancestor had. And that if it had been the intention of the St. 11 and 12, Wm. III, c. 6, to permit aliens to inherit from an alien, the enabling provision would not have been restricted to the English subjects, and if the construction followed by the majority was to be taken, then they must, to be logical, go further, and hold that a deed from an alien to an alien before demand made on the part of the state, conveys an indefeasible title to the alien. There are constitutional or statutory provisions modifying the common law restrictions upon the right of the alien to acquire and hold land in all the states with the exception of Vermont. In twenty-three of the states all of the disabilities are removed. In Connecticut, Iowa, Minnesota, Mississippi, Nebraska, New Hampshire, Wisconsin, and Wyoming, the privileges of a citizen are extended to resident aliens. In California, Montana, and Idaho the privileges are extended to the resident aliens; but for a nonresident alien to take by succession he must appear and claim within five years. An alien may hold for a limited number of years in Illinois, Kansas, and Kentucky. In Arizona the same privileges are extended to an alien as

their citizens have in the alien's country. Resident aliens with declared intention of becoming a citizen may take and hold by deed or devise in Delaware. Restrictions are removed as to resident aliens with declared intentions of becoming citizens, and as to actual farm settlers in Minnesota. Aliens are restricted in purchasing lands to five thousand acres or twenty thousand dollars in income from such; but may take by devise or descent without limit in Pennsylvania. In Texas the privileges of the citizen are extended to aliens while bona fide inhabitants, and to aliens with declared intentions of becoming a citizen. Non-resident aliens may acquire by purchase, descent, or devise and hold for ten years. Under the system of laws in Louisiana there is nothing that excludes aliens from acquiring and holding lands.

BAILMENT—LIABILITY OF INCIDENTAL BAILEE.—Defendants conducted a clothing store in New York City. Plaintiff called at the store for the purpose of purchasing a vest. All the clerks being engaged with customers, he was directed to a table in another part of the store where such garments were kept. Unattended by any clerk, he went to the table designated, and removing his coat and vest, proceeded to try on the garments. Having found one to suit him, he started to put on his own garments when he discovered that his vest, which contained a watch, chain and cigar cutter, was missing. *Held,* that defendants were not liable for the loss. *Wamser* v. *Browning, King & Co.* (1907), — N. Y. —, 79 N. E. Rep. 861.

In the Appellate Division of the Supreme Court, this case was decided in favor of plaintiff as reported in 109 App. Div. 53, 95 N. Y. Suppl. 1051, and commented upon in 4 MICHIGAN LAW REVIEW 473, where the cases on the subject of the liability of an incidental bailee, such as a shopkeeper, barber, bathing house manager, theatre manager, and the like are collected and commented upon. The decision in the Supreme Court was based upon the case of *Bunnel* v. *Stern,* 122 N. Y. 539, in which case Mrs. Bunnel's cloak, which she had laid aside, was stolen while she was trying on a garment from the stock. There was a clerk in attendance, and a floorwalker had charge of the department, and the court held that it became the duty of defendants to exercise some care for the plaintiff's cloak inasmuch as she had laid it aside on their invitation, and with their knowledge, and they omitted to do what a reasonable man would have done under the circumstances. The Court of Appeals in reversing the decision, distinguishes this case from *Bunnel* v. *Stern* in that here the plaintiff was unattended by anyone connected with the establishment and there was no one present in whose charge the garments could be placed. Moreover, plaintiff, knowing the contents of his vest, permitted it to be taken from a place within a few feet of where he stood and his loss was due to his negligence. The rule deducible from these decisions seems to be that if the customer is attended by a clerk and lays his garments aside at the invitation or by the permission of the clerk, it is incumbent upon the shopkeeper to prevent its being stolen. If no one is in attendance such a liability does not attach.